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Attorney Docket No. A-70895/DJB/VRJ
Attorney Matter No. 463678-00192
Application No. 09/977,151**REMARKS**

Reconsideration of this Application is respectfully requested. Upon entry of the foregoing amendments, claims 1-5 and 15-37 are pending in the application, with claims 1, 15, and 32 being the independent claims. Claims 6-14 have previously been canceled without prejudice or disclaimer and claims 31-37 have been added. Support for the subject matter of the amended and new claims is contained in the application as originally filed. Because the foregoing changes introduce no new matter, their entry is respectfully requested.

Claim 2 has been amended to ensure that the previous amendment is properly entered. Applicant notes that the Amendment filed May 15, 2006, included a syntactical error in the amendment to claim 2.

Based on the above Amendment and the following Remarks, Applicant respectfully requests that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Rejections under 35 U.S.C. § 103***Claims 1-5 and 24-30***

The Examiner has rejected claims 1-5 and 24-30 under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 6,550,646 to Takahara et al. ("Takahara"). Takahara fails to teach or suggest the fitment of the present invention including a semicircular member as called for by amended claim 1.

As a preliminary matter, Applicant notes that amended claim 1 and new claim 33 both call for the semicircular member "recessed within said spout." New claims 31 and 32 both call for the semicircular member extending at least approximately 180°.

Takahara does not disclose such a fitment including a semicircular member, and the Examiner even acknowledges that Takahara fails to teach or suggest a *semicircular* member. See Office Action mailed August 10, 2006, page 2, section 2, second paragraph. However, the

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Examiner posits that it would have been obvious to one of ordinary skill in the art to form the gripping member in a semicircular shape "since such a modification would have involved a mere change in the shape of a component." The Examiner submits that a "change of shape is generally recognized as being within the level of ordinary skill in the art." *See id.* Applicant respectfully disagrees. Takahara fails to teach or suggest the fitment of the present invention including a *semicircular* member.

As discussed in the *AMENDMENT AND REPLY* filed November 25, 2005, Takahara discloses an "L-shaped knob 13" that protrudes from a top wall and falls "sideways." *See* column 4, lines 51-53. As shown and described, a vertical base portion 13a rises upwards and a horizontal portion 13b extends circumferentially a short distance parallel to the breaking lines. *See* col. 5, lines 41-45. The horizontal portion 13b forms a stub or tab end which a user grips. *See* FIG. 1. In contrast to the member disclosed in claim 1, Takahara fails to teach or suggest a semicircular member as called for by claim 1. Takahara fails to even disclose an open configuration. Knob 13 disclosed by Takahara is depicted as a tab, belt, or closed disk (FIG. 24), which are distinct from an open semicircle shape both in appearance and in function.

Additionally, there is no motivation to modify the knob of Takahara to form a semicircular-shaped member. Even if a change of shape is within the level of ordinary skill in the art, the Examiner has failed to point to specific motivation in Takahara for modifying the knob 13 to form a semicircular shape. The Examiner suggests that forming the knob in a semicircular shape would allow the member to "more closely follow the contour of the spout." However, there is no such motivation mentioned in Takahara.

In fact, over 60 references have been made of record thus far, and none disclose the semicircular member of present invention. Instead, the Examiner merely relies on the preconceived notion that it is obvious to break a closed ring into a semicircular member. Should the Examiner maintain this rejection, Applicants respectfully request citation of a reference in support of the Examiner's position. *See* M.P.E.P. § 2144.03.

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Turning now to another feature of the present invention, Takahara also fails to disclose or suggest a semicircular member "recessed within said spout" as called for by amended claim 1 and new claim 33. Takahara discloses a container including a tube member 1. *See* col. 4, lines 24-27. Takahara fails to even disclose a spout, much less a semicircular member recessed within said spout. Instead, Takahara discloses a neck portion 4 and top wall 5. *See* col. 4, lines 30-35. Knob 13 extends upward from the top wall. *See* FIG. 1. In contrast, the fitment of the present invention includes a spout and a semicircular member. Claims 1 and 33 further call for the semicircular member recessed within said spout.

In one embodiment, depicted in FIG. 23, Takahara discloses a spout-like configuration of neck 4. However, this neck configuration serves a different purpose than the spout of the present invention. *See, e.g.,* col. 9, lines 52-55. Moreover, even in this embodiment, the knob "protrudes upwardly from the upper surface of the top wall." *See* col. 9, lines 13-14. Takahara does disclose or suggest the knob being recessed within a spout or otherwise.

Furthermore, Takahara fails to disclose or suggest the semicircular member "extending at least 180°" as called for by new claims 31 and 32. In apparently rejecting claim 5, the Examiner suggests that one skilled in the art would be motivated to "extend approximately 270°" the knob of Takahara which "provides more area for gripping." *See* Office Action, section 2, paragraph 2. Applicant respectfully disagrees. First, Takahara provides no motivation for extending horizontal leading portion 13b at least 180° or approximately 270°. Second, Takahara teaches away from extending the knob. Extending the knob would counter the goal of Takahara, namely, providing a gripping tab with sufficient size to be picked or pulled but not so long as to be an obstacle. *See* col. 9, lines 13-15. Also, the horizontal leading portion of knob 13 extends in a circumferential direction contrary to third breaking line 17. *See* col. 5, lines 41-45. In this manner, when one pulls on the horizontal portion, knob 13 effectively acts as a lever and transmits the pulling force to breaking line 17. *See id.* Extending the knob defeats this purpose.

Even if one were to extend the knob of Takahara in a circular direction, one would not arrive at the present invention because the knob of Takahara only has a closed configuration with one end in contact with the breaking line. If the knob of Takahara were to be extended, one

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would only obtain a string-like member in contrast to the semicircular member of the present invention. Takahara fails to include any motivation for forming knob 13 in such a semicircular shape and extending at least 180°.

As previously discussed in several previous amendments and most recently in the *AMENDMENT AND REPLY* dated November 25, 2005, the semicircular configuration of gripping member 69 does have several advantages over prior pull rings and pull tabs similar to that taught by Takahara. In the manufacturing process, a closed disk or tab requires a significantly more complex molding design. A flexible semicircular shape allows for easier ejecting of pieces from the mold. Given the open configuration of the semicircular member of the present invention, extending the member at least 180° aids in gripping by a user. Also, recessing the semicircular member within the spout provides for a more compact design and keeps the member out of the way.

For at least these reasons, Applicant respectfully submits that Takahara does not render obvious independent claim 1. Applicant submits that claims 2-5 and 24-30 and new claim 31, which depend from claim 1, are allowable over the cited art for at least the same reasons noted above.

Allowable Subject Matter

Applicant thanks the Examiner for indicating that claims 15-23 are allowed.

Other Matters

Applicant respectfully submits that new claims 32-37 are allowable over the cited art of record. New claim 32 includes similar features as claim 1 and calls for a fitment including:

- a spout having upper and lower ends;
- a frangible membrane sealing off said spout and having a peripheral edge joined to said spout along a line of weakness; and
- a gripping member adapted to facilitate removal of said frangible membrane from said spout, said gripping member including a semicircular member having first and second terminal ends, said first end being connected to said frangible membrane adjacent said line of weakness, and said second end

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being remotely located from said first end and unconnected to said frangible membrane;

wherein said frangible membrane and said gripping member are monolithically formed and said semicircular member extends at least 180°.

As discussed above, the art of record, including Takahara, fails to disclose or suggest the claimed fitment. In particular, the art of record fails to teach or suggest the semicircular member being recessed within the spout, as called for by claims 1 and 33, or extending at least 180°, as called for by claims 31-32.

For at least these reasons, Applicant submits that claims 31-33 are allowable over the cited art of record.

CONCLUSION

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicant believes that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided below.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extension of time or additional claims, and/or credit any overpayment to Deposit Account No. 50-2319 (Order No. 463678-00192; Docket No. A-70895/DJB/VEJ).

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Prompt and favorable consideration of this Amendment and Response is respectfully requested.

Respectfully submitted,

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Date: October 31, 2006

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